



M E M O R A N D U M

Date: May 14, 2001

To: All Delegated Purchasing Contacts

From: Delegation Resources Program
Department of General Services
Procurement Division

Subject: REVISED DELEGATION GUIDELINES – Information Technology (IT)

The Delegation Guidelines – Information Technology have been revised and are attached to this memo. Effective on the date of this memo, any other existing guidelines for the purchase of information technology and telecommunication goods and services up to \$500,000.00 are hereby superceded by these revised guidelines.

These revisions are the outcome of many months of collaborative meetings, research, advice, rewrites and review by the staff of Delegation Resources, the PD buying staff and the buying staff of many departments with delegated purchasing authority. These new guidelines reflect the many issues raised and bring the guidelines current with recent legislation.

It is a condition of the Delegated Purchasing Program that the delegation contact is responsible for assuring that all purchasing staff read and understand the guidelines. Therefore, it is of utmost importance that the delegation contact relay this document and information contained therein to all purchasing staff and pertinent department personnel in a timely manner. We urge you and your staff to review these new guidelines carefully and thoroughly to become familiar with their content and any new requirements.

There are many attachments referenced in the guidelines. Their inclusion is intended to provide assistance to your purchasing program, and we encourage their use. Of importance is Attachment 1, Request for Delegated Purchasing Authority. Any new request, renewal or request for modification to an existing delegation must be submitted on this new request form. Requests submitted in any other manner or format will be returned.

If your department also has expanded and/or special delegated purchasing authority where the purchasing limit exceeds \$500,000.00, you must comply with the requirements contained in the guidelines as attached, except for requirements relating to solicitation rules and limits. Revised guidelines for requirements pertaining to expanded and/or special delegations will be issued shortly.

Should you need assistance regarding your delegation, the new guidelines or the new request form, please contact me directly or Cheri Shaw of my staff at (916) 324-0158. We look forward to working with you to continually improve the quality of the delegated purchasing program.

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JH:jh

Attachments

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DELEGATION GUIDELINES

for

Information Technology

May, 2001

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Procurement Division
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A. AUTHORITY TO GRANT DELEGATION

The Department of General Services (DGS), Procurement Division (PD) grants this delegation pursuant to the authority set forth in Public Contract Code (PCC) Sections 12100 et. seq.

The ability to process acquisitions under this delegation is a privilege and the department to which this delegation is granted (department) shall be held accountable for awarding transactions based on statutes, policies, procedures, sound business practices and cost effectiveness in the best interest of the State. In its sole discretion, PD reserves the right to amend these guidelines or rescind this delegation at any time.

At present, delegations are granted for a one-year period and must be renewed via formal request in writing, one month prior to expiration of the delegation term. All future renewals or modifications to existing delegations must be requested using the attached Request for Delegated Purchasing Authority, see [Attachment 1](#). The information provided will enhance the delegation program by enabling the program staff to have a clear picture of the department's purchasing program.

If a department has been granted an Expanded or Special Delegation for formal competitive bidding, the department must adhere to all of the rules and responsibilities granted under this Base Delegation. Expanded and/or Special Delegation Guidelines take precedence only in instances regarding the rules for solicitations, solicitation awards, Business Participation preferences and post-award disputes and protests.

This delegation is granted to a primary office of the department. In the event this authority is sub-delegated to other divisions or offices within the department, responsibility and accountability for the procurement activities conducted under this delegation remains with the primary office/agency officer.

Nothing in these delegation guidelines shall be construed to confer authority for any purpose or reason contrary to any State statute, appropriation, regulation, etc.

B. ROLES AND RESPONSIBILITIES

This section defines the various roles and responsibilities of individuals involved in the procurement process. The department must, at a minimum, designate an agency officer in accordance with Section B.1. and a delegation contact in accordance with Section B.2. Designation of lead staff and/or subordinate purchasing staff is optional, depending on the size and organizational structure of the department.

All staff involved in the procurement process must have the appropriate experience, level of responsibility, and accountability as may be required to ensure departmental compliance with PCC Section 12100, et.seq. and these guidelines.

1. AGENCY OFFICER

The PD, exercising its authority to grant delegations under PCC Sections 12101(c) and 12102(f), has determined that as a condition of this delegation, departments shall designate an agency officer who is responsible and directly accountable for the department's purchasing program.

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The primary role of the agency officer is to provide management support of the procurement function; provide staff and budgeting resources necessary to ensure that all staff are properly qualified and trained in all aspects of the procurement process; ensure that the acquisition of information technology goods and services does not violate or circumvent State law, executive orders, appropriations, regulations or the provisions of these guidelines; and assign the responsibility of a Small Business Advocate to an appropriately qualified staff person.

Acceptable positions to fulfill the agency officer requirement include secretary or undersecretary, director or deputy director, chief executive officer or assistant chief executive officer, or chief of administration. A department may designate a different position, however such position must meet the intent of this section and PD must be notified in writing. The agency officer may assign responsibility for the department's day-to-day procurement activities to a delegation contact (see Section B.2.). The agency officer will not be relieved of this responsibility.

If a department has more than one type of delegation; i.e. goods both base and/or expanded and special, information technology, etc. the designated agency officer to fulfill this requirement must be the same person for all delegations held by the department.

2. DELEGATION CONTACT

The primary role of the delegation contact is to interface and communicate with PD, the agency officer, and subordinate staff; maintain the department's procurement policies and procedures manual; stay abreast of changes in statutes, policies, and procurement practices; and generally oversee the day-to-day administration of procurement activities.

The delegation contact may assign responsibility for the preparation and approval of procurement transactions to lead staff or purchasing staff, however the delegation contact may not be relieved of the responsibilities required by this delegation.

The delegation contact must report directly to the agency officer. Acceptable positions to fulfill this position include the department's Chief Procurement Officer, Chief of Business Services, or Chief of Administration. A department may designate a different position, however such position must be at a level equivalent to those stated above and PD must be notified in writing.

The delegation contact is responsible for the distribution of these guidelines amongst the department's purchasing staff and amongst other responsible purchasing entities, notably the department's CAL-Card Coordinator.

3. LEAD STAFF

The primary role of lead staff is to interface and communicate with the delegation contact and subordinate staff; oversee sub-delegated purchasing activities in decentralized purchasing locations, such as divisions, field offices, district offices, and other remote locations; serve as a lead and mentor to less experienced purchasing staff; and conduct the more complex delegated transactions. Lead staff must have the appropriate knowledge of procurement laws, policies, procedures, these guidelines, and procurement practices.

Lead staff must have a reporting relationship and/or a clear line of communication with the delegation contact.

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4. PURCHASING STAFF

The primary role of purchasing staff is to carry out the day-to-day procurement functions on behalf of the department. All purchasing staff must have the appropriate knowledge of procurement laws, policies, procedures, these guidelines, and procurement practices.

5. SMALL BUSINESS ADVOCATE

Pursuant to Government Code (GC) Section 14846, departments with an annual contracting program of \$100,000 or more shall establish a Small Business Advocate to act as a liaison for small businesses. The Small Business Advocate shall:

- a. Assure small businesses are advised about pending solicitation and contracting opportunities.
- b. Ensure prompt payment of invoices due to small businesses.

C. REQUIREMENTS OF THE DELEGATION PROGRAM

1. REQUIREMENTS OF PUBLIC CONTRACT CODE SECTION 12101 et seq. and 12102 (f)

PCC Sections 12101(c) and 12102(f) authorize DGS to delegate purchasing authority to those departments that have demonstrated the ability to conduct value-effective information technology and telecommunications goods and services acquisitions. The PD, exercising this authority, has determined that every department receiving a delegation must comply with certain conditions. The department acknowledges these conditions as stated below and agrees to abide by them during the term of this delegation. Thus, the department will:

- a. Designate an agency officer as responsible and directly accountable for the department's purchasing program (see Section B.1.).
- b. Establish written policies and procedures. These will include procedures for ensuring and documenting competitive purchasing; complying with purchasing standards; inspecting purchased products for compliance with specifications; reporting supplier failures to deliver products as specified in purchase orders; ensuring that department purchasing personnel are free from conflict of interest; and complying with other provisions of law as PD may require.
- c. Establish procedures for complying with the provisions of the Small Business Procurement and Contract Act (GC 14835). The procedure shall include direction for meeting the participation goals for small businesses in state procurement as established by PD pursuant to GC Section 14838.
- d. Establish policies for training personnel in purchasing law and procedures, controlling and reviewing purchasing practices, auditing purchasing activities, and delegating purchasing authority within the agency.
- e. Report such data to PD as required.

2. STATUTORY, POLICY, AND PROCEDURAL REQUIREMENTS

In addition to these guidelines, the department is required to adhere to applicable provisions of state law including but not limited to Public Contract Code, Government Code, Military & Veterans Code, Labor Code, Revenue & Taxation Code, Food & Agriculture Code. Other

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applicable provisions may include, federal law, regulations, policies, procedures, and procurement practices, including the State Administrative Manual (SAM), the California Acquisition Manual (CAM) and the Statewide Information Management Manual (SIMM). The Procurement Division's publications, "Excerpts of California Codes Relating to State Purchasing" ([Attachment 2](#)) and "Summary of Statutory and Policy Requirements for State Contracts" ([Attachment 3](#)) are attached for your information and reference.

3. AMERICANS WITH DISABILITIES ACT REQUIREMENT

Acquisitions conducted under this delegation are subject to the Americans with Disabilities Act (ADA). To comply with the non-discrimination requirements of the ADA, it is the policy of the State to make every effort to ensure that its programs, activities and services are available to all persons, including persons with disabilities. For persons with a disability needing a reasonable accommodation to participate in the procurement process, or for persons having questions about reasonable accommodation, the delegated department's ADA Coordinator must be available to assist and respond to such requests or questions. These contacts must be shared with the Procurement Division ADA Coordinator in accordance with the Disability Advisory Committee reporting requirements.

4. ADDITIONAL APPROVAL REQUIREMENTS

If any other approvals to purchase are required, such as DGS Telecommunications Division, Department of Information Technology, Department of Finance or any other internal approval required by a delegated department, such approvals are in addition to this delegation. It is the department's responsibility to maintain evidence in the procurement files that appropriate approvals were obtained prior to contracting.

5. PROMPT PAYMENT REQUIREMENTS

The department shall establish procedures for complying with the provisions of the California Prompt Payment Act (the Act), GC 927, et. seq. Paraphrased, this code says that unless expressly exempted by statute, the Act requires state agencies to pay properly submitted undisputed invoices in accordance with the contract. Payment will be made not more than 45 days after the later of (a) the date of acceptance of goods or performance of services or (b) receipt of an undisputed invoice. The Act also requires state agencies to automatically authorize the payment of penalties whenever an undisputed invoice is not paid within these timeframes. Visit PD's internet site for more information.

6. CONFLICT OF INTEREST STATEMENTS

The department must maintain signed conflict of interest certifications for every staff person involved in the procurement process. "Involved in the procurement process" is defined as soliciting bids, preparing requisition requests, preparing purchase documents, approving purchase orders, receiving goods, and approving payment. The certification must reference and/or include GC Section 19990. The department may use its own certification document such as an incompatible activity statement, ethics statement, conflict of interest statement or they may use the sample conflict of interest statement included with these guidelines ([Attachment 4](#)). An employee must certify only once during his/her tenure with the department. Certifications must be available for review in accordance with Section C.7.

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7. PERIODIC COMPLIANCE REVIEWS

PD, exercising its authority granted by PCC Section 12102(f), will conduct a review of the department's delegated purchasing program every three (3) years or more often as warranted by the most recent compliance review. The compliance review will encompass, as applicable, a review of:

- Selected delegated purchasing authority transactions
- Purchases outside this delegation authority as follows:
 - Orders placed against PD's leveraged contracts, including
 - CMAS
 - Master Agreements
 - Western States Contracting Alliance (WSCA)
- Transactions utilizing CAL-Card as the payment mechanism

The review will provide the department with an assessment of the strengths and weaknesses of its purchasing program, as well as guidance to assist the department in maintaining compliance with the delegation guidelines and developing a high level of quality purchasing expertise.

Each department must maintain complete and accessible procurement files that include all appropriate documentation. If the department's acquisition program is decentralized (i.e. divisions, field offices, district offices), PD may request that purchase files be available in a central location for PD review. If the findings of a compliance review prove to be unsatisfactory, PD may impose the following actions (or any combination thereof) at PD's sole discretion:

- a. Exercise closer supervision over the department's purchasing delegation program
- b. Impose additional quality assurance or quality control methods and procedures
- c. Withdraw exemptions or delegated purchasing authority previously granted
- d. Restrict the department's authority to administer contracts or execute amendments
- e. Take other actions determined to be appropriate for the circumstances

D. RESOURCES AVAILABLE THROUGH PD

The PD is instrumental in connecting the supplier/seller community with buyers for goods and services that the State needs to carry out the mission its departments. Within the PD, the Business Development Unit (BDU) acts as a "clearinghouse" for information regarding all aspects of the division that a department may need, (i.e., who to contact within PD, special procurement events, the California State Contracts Register program, etc). The BDU is PD's point of contact for fielding these types of questions. The Delegation Resources Program is available to assist the department with all aspects of managing its delegated purchasing program.

Many of the resources noted in these guidelines, as well as other valuable information, are available on PD's Internet site. A directory of all internet addresses and telephone numbers referenced in these guidelines is attached ([Attachment 5](#)).

E. SCOPE OF DELEGATION

This delegation is intended for the acquisition of information technology and telecommunications goods and services without restriction to the nature of those goods and services unless otherwise noted in this document.

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1. DELEGATION LIMITS

The maximum amount of this delegation is \$500,000.00 (excluding sales and use tax, shipping, postage, and handling) per transaction for information technology and telecommunication goods and services with no annual limitations. "Per transaction" means the aggregate total per Contract/Delegation Purchase Order (Std. 65) (CDPO), **Attachment 6**, or per IT Standard Agreement (**Std 2 / 213** or **213www**), **Attachment 7**, including any amendments, but without sales and use tax, shipping, postage, and handling. Transactions must not be split for the purpose of circumventing these limits.

Although the department has the ability to contract up to \$500,000.00 per transaction, PD will, upon the department's request, process any Purchase Estimate (Std 66) for any amount submitted by the department.

GC Section 14838.5 (a) and (b) allows departments to award contracts of \$5,000.01 to \$99,999.99 to certified small businesses, provided the department has obtained price quotations from at least two responsible and responsive certified small businesses and made the award to one of the certified small businesses. (See Section H.1 for more information.)

2. SPLITTING ORDERS

Policy requires that "no person shall willfully split a single transaction into a series of transactions for the purpose of evading the bidding requirements of this article". A department may also not split an order to circumvent the limits of its delegated purchasing authority. Periodic replenishment of consumable supplies is not considered splitting an order.

3. ORDERS EXCEEDING THE DELEGATION LIMITS

Acquisitions valued at more than \$500,000.00 (excluding taxes, shipping, etc.) per transaction shall continue to be processed by submitting the request on a Purchase Estimate (Std. 66), **Attachment 8** to PD, unless a One-Time Delegation has been granted (see **Attachment 9**).

4. EMERGENCY ORDERS

PCC Section 1102 defines emergency as "a sudden, unexpected occurrence that poses a clear and imminent danger requiring immediate action to prevent or mitigate the loss or impairment of life, health, property or essential public services". In the event of an emergency as described herein, departments may undertake the necessary actions to save lives and property. If it is impractical or impossible to contact the PD prior to obtaining the item(s), the department must notify PD within five (5) days of the action with the information described below to obtain a Form 42 in order to process the invoice (see CAM 3.2.7).

If the event cannot be described in these terms, the department must request PD approval to exceed its delegated purchasing authority for emergency purposes and must obtain bids from a minimum of two suppliers and prepare a CDPO for award to the low bidder. The department must submit the CDPO, all relevant documentation, and a justification to PD for consideration and approval. The justification must include the following information:

- Description of the emergency
- Explanation of why the situation warrants an emergency purchase
- Explanation of the consequence of making the acquisition through the normal competitive process

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- Provide a description of the goods and price
- Provide the names and quotations of other suppliers contacted
- Provide the name of the intended supplier

If the purchase is authorized, PD will issue an Authorization to Exceed Monetary Limits, Form 42, and provide the department with a copy. The department must enter the Form 42 number (F42-XXXX) in the "Contract/Delegation Number" box on the CDPO. This number identifies the CDPO as an authorized transaction to the State Controller's Office. For more information, contact PD's Technology Acquisitions Section.

5. COMMODITY GOODS vs. IT GOODS

The department's delegated purchasing authority is for the acquisition of information technology and telecommunications goods and services. However, to determine if a transaction is for the acquisition of only commodity goods or IT/telecommunication goods, the following criteria may be useful:

What is the main purpose of the contract? There are many items which require IT technologies to function, yet they may not be considered IT equipment. If the item is determined to be a commodity, the transaction should be treated as a "good" and be acquired under the Delegation Guidelines for Goods.

Example: Many copiers have sophisticated IT functionality, but the main purpose of the copier is to produce copies. In this instance, the acquisition would be treated as a commodity procurement, not an IT procurement.

For more information regarding the purchase of information technology and telecommunication goods and services, contact PD's Technology Acquisitions Section.

6. USE OF CAL-CARD AND DELEGATED AUTHORITY

Any department with delegated purchasing authority may apply to participate in the State's CAL-Card Purchase Card Program. The CAL-Card is a payment method, not a procurement method. Use of the CAL-Card does NOT preclude the requirement to follow all acquisition rules and delegation guidelines (see Section F.). The department's delegation contact is responsible for distributing the Delegation Guidelines to the CAL-Card Coordinator and is the responsible party for questions related to the department's purchasing program. For more information regarding CAL-Card responsibilities, contact PD's CAL-Card Program.

7. PURCHASES OUTSIDE THIS DELEGATION:

Specific types of purchases are outside the scope of this delegation. Those specific types of purchases are as follows:

- a. Purchases Conducted Under PD Oversight. Do not use the department's delegated purchasing authority to make purchases against the separate procurement authorities described below. As applicable, the relevant contract number must be entered in the Contract/Delegation Number box on the CDPO instead. The department may request delegated purchasing authority for the purchase of commodities by contacting the Delegation Resources Program. The department may request expanded or one-time purchasing authority for information technology and telecommunication goods and services by contacting the Delegation Resources Program. These purchases include, but are not limited to:

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- Purchases that exceed the department's delegated purchasing authority of \$500,000.
 - Commodity goods
 - California Multiple Award Schedule (CMAS) Orders.
 - Master Agreement Orders.
 - Master Purchase Agreement orders (including Prime Food contract and California Computer Store orders).
 - Master Rental Agreement orders.
 - Master Service Agreement orders.
 - State Price Schedule orders.
 - Western States Contract Alliance (WSCA) orders.
- b. Purchases Conducted Under Other Authority. Do not use the department's delegated purchasing authority to make these types of purchases. PD does not have oversight authority over these purchases.
- Non-Information Technology Services. DGS' Office of Legal Services has oversight over the purchase of non-information technology services.
 - Goods and/or services for public works. "Public Works" is defined in the PCC 1101 as an agreement for the erection, construction, alteration, repair, or improvement of any public structure, building, road or other public improvement of any kind. (See the SCM)
 - Memberships in professional organizations for represented and non-represented employees. For more information, contact the department's labor relations officer.
 - Departmental memberships in professional organizations. For more information, contact DGS' Office of Legal Services.
- c. Alternative Procurements. Alternative procurements, as described by SAM 5215, are not delegated. Requests for alternative procurements must be submitted to and approved by DOIT and PD's Technology Acquisitions Section.

F. PROCUREMENT STANDARDS

1. RULES FOR ACHIEVING COMPETITION

- a. Acquisitions Valued at Less Than \$5,000.00
Competition is always the preferred method of acquisition. However, in accordance with GC Section 14838.5, effective January 1, 2001, agencies may acquire goods valued at less than \$5,000.00 per transaction without competition or extensive file documentation, see F.2.b.(6) for minimum requirements. The department is strongly advised to seek competition whenever reasonable pricing cannot be determined or the department anticipates a degree of risk that could be better controlled through competition.
- b. Acquisitions Valued at \$5,000.00 to \$500,000.00
Competitive solicitations conducted under this delegation are considered "informal". This means that the solicitation may be conducted in writing, via telephone, fax, electronically or by other means. The discussion that follows describes the number of bidders required to determine effective competition:
- (1) To determine that "competition" has been effective, bids must be received from at least two responsive and responsible bidders. For a definition of "responsive" and "responsible" refer to the California Acquisition Manual (CAM) Chapter 3.5.4. However, to establish a competitive range, more than two bids are desirable. A response of "no-bid" shall not be considered as receiving a bid. When two or more

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bids are received that are responsive and the lowest bidder is deemed responsible, the department may proceed with the award.

- (2) It is recognized that the attempt to achieve a competitive result may not always provide two responsive and responsible bidders due to a variety of circumstances. In such cases, the following procedure(s) shall apply and the file must be documented with the business case and result:

(a) Competition results in no responsive, responsible bids received

If this occurs, the buyer has two options:

Option 1. The solicitation may be cancelled and re-bid, modifying any possible restrictive requirements. The buyer should also consider methods to broaden the number of potential suppliers.

OR

Option 2. If, in the opinion of the buyer, a second solicitation would not result in a different outcome, the buyer may cancel the solicitation and proceed with a sole source award only if the award is less than \$25,000.00, following the procedures outlined in Section G.6. To determine which supplier should be selected as a sole source, the proposed supplier's bid must be substantially technically compliant/responsive with the specifications and the supplier must be deemed responsible.

(b) Competition results in only one responsive bid from a responsible supplier even though multiple bids were received

If this occurs, a buyer may declare that competition has been achieved under the following conditions after carefully considering all factors of the situation (risk, urgency, and impact to their program).

- (i) Non-participation due to the State's socio-economic requirements. The buyer must document the procurement file with the reasons why only one responsive bid was received. The buyer will likely have to request this information from bidders who were initially responded to the solicitation announcement. If non-participation was due to the state's statutory requirements such as DVBE, Small Business, etc., this information shall be incorporated into the documentation. The file must also be documented with the evaluation of other bidders who were determined to be non-responsive or responsible. Then, after carefully documenting the rationale, the buyer may proceed with the award.

- (ii) Non-participation due to concerns with the bid specifications. If this occurs the buyer should consider three options:

Option 1. If the specification(s) in question are not unnecessarily restrictive, the buyer may proceed with award after documenting the file with the rationale used for determination.

OR

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Option 2. If the specification(s) in question is determined to be unnecessarily restricted to one supplier's product(s), the solicitation may be cancelled and a new solicitation developed modifying the specification(s) as necessary to facilitate fair competition.

OR

Option 3. If the specification(s) and or requirement(s) in question is determined to be unique to one supplier's product(s) AND the department determines that only that product(s) meets the department's needs, the buyer must document the file that this solicitation has been determined to be a sole source and may proceed with the award if the award is less than \$25,000, see G.6.

2. SOLICITATION CREATION AND EVALUATION

a. Acquisitions Valued at Less Than \$5,000.00

While solicitations are not required for these transactions, the department is encouraged to do so when considering unknown pricing and unique risk factors. If determined to be necessary, the department should use the same criteria when creating and evaluating these solicitations as for transactions \$5,000.00 and greater.

b. Acquisitions Valued at \$5,000.00 to \$500,000.00

Solicitations between these values are considered informal. However, because of the wide dollar range, PD recommends the following processes for deciding when to utilize different solicitation methods. These are not mandatory, but suggested methods to protect the State's best interests. PD also recommends using written solicitations that require written responses for all transactions of a more complex nature or where the documented requirements are lengthy and specific. Additionally, all information technology and telecommunications services in this dollar range must be solicited using value-effective methodology where the evaluation considers administrative and technical criteria as well as cost for contract award. The solicitation documents for these contracts must be clearly written to ensure that bidders understand how they will be evaluated. Contact Delegation Resources for more information regarding how to structure these solicitations.

(1) Solicitations between \$5,000.00 and \$25,000.00. Solicitations for these informal acquisitions may be conducted in writing, by telephone, by fax or by other means. When conducting a solicitation by telephone, the department should write a "script" or narrative of what the solicitation entails so that each bidder is informed equally. All solicitations for IT services over \$5,000.00 must be advertised in the California State Contracts Register. To maximize competition, it is recommended that all solicitations be advertised in the California State Contracts Register maintained by PD and available on PD's Internet site.

(2) Solicitations between \$25,000.00 and \$100,000.00. Solicitations expected to be valued to \$100,000.00 for products and services of a more routine "off-the-shelf" nature should be written. PD recommends using a format titled Request for Quotation (RFQ). This format may be developed by departments and vary in look as long as there are sections that describe the required specifications, the date bids are due, the department contact person, and the RFQ is mailed or faxed to suppliers. Bids or quotes submitted in response to an RFQ may be received by mail or fax or by other means. The "Bid/Quote Worksheet" (see [Attachment 10](#)) must be documented with the evaluation of bids received and must be maintained in the procurement file. To maximize competition, it is recommended that these

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solicitations be advertised in the California State Contracts Register maintained by PD and available on PD's Internet site.

- (3) Solicitations between \$100,000.00 and \$500,000.00. Solicitations expected to be valued to \$500,000.00 for products and services where specifications are more complex and extensive and include conditions such as acceptance testing and performance standards should be written. PD recommends the use of the RFQ format described above or the Invitation for Bid (IFB) or Request for Proposal (RFP) format described in SAM 5200. To maximize competition it is recommended that these solicitations be advertised in the California State Contracts Register maintained by PD and available on PD's Internet site.

Solicitations with an estimated value expected to exceed \$85,000 must include provisions for Target Area Contract Preference Act (TACPA), Enterprise Zone Act (EZA) and Local Agency Military Base Recovery Area Act (LAMBRA) preferences, (see Section H. 3, 4, and 5). (Contracts awarded over \$100,000 must have allowed for the evaluation of these preferences.) The solicitation must include a reference to these Business Participation Programs and include the relevant forms, (see **Attachments 16, 17 and 18.**

The maximum bid preferences (granted under TACPA, EZA, LAMBRA and/or Small Business) is fifteen (15%) percent; the maximum value for each cannot exceed \$50,000; and a combined preference value cannot exceed \$100,000. For further explanation of the allowed preferences contact the Office of Small Business Certification and Resources (OSBCR), (see **Attachment 5**).

c. Solicitation Requirements and Considerations

Regardless of the dollar value of the solicitation, the following should or must, as applicable, be considered.

- (1) Bid Lists. The department should develop a variety of avenues for finding potential suppliers, establishing bidder's lists, and varying the use of bidders. The department should also make a concerted effort to solicit certified small businesses (SB's) and disabled veteran-owned business enterprises (DVBE's). Solicitations may be advertised on the CSCR as PD no longer maintains bid lists, unless the solicitation is for IT services, see F.2.b.(1). Contact the CSCR for instructions on how to advertise solicitations on the PD Internet site and/or the Delegation Resources Program for further information.
- (2) Request for Interest. In the event a bid list is excessively large, the department may issue a "Request for Interest" (RFI) to all potential bidders. The RFI is used to separate those suppliers who intend to participate in an upcoming solicitation from those who have no interest. An RFI:
- Should be short, concise, and to the point.
 - Must include the solicitation number and title.
 - Must include a general description of the equipment or services to be solicited;
 - Should include estimated quantities, features, general time frames, any pertinent geographic information, buyers name and telephone number, etc.
 - MUST NOT provide or ask for any cost information as such information could create an unfair bidding environment.
 - Should provide space for interested bidders to provide contact name, address, telephone number and submittal date.
 - Must include where and how to submit the response to the RFI.

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- (3) Samples. The practice of obtaining samples from suppliers is not recommended, unless it is a requirement of the solicitation process. If items are needed for review prior to award for demonstration or pre-purchase testing, the solicitation must so state and noted with the information that the State is not obligated for the cost of the items or for their return. Be extremely cautious that the solicitation response does not contain terms or conditions that would result in the automatic purchase of the item(s) being tested.
- (4) Bidders Instructions. To adequately protect the State, it is required that all written solicitations valued at \$5,000.00 or more include the current Bidder's Instructions (GSPD-451, Rev. 1-1-01 or later revision) ([Attachment 11](#)). Deletion or alteration of any instruction(s) may not occur without first consulting with PD. Updated versions of the Bidder's Instructions will be posted periodically and are available for printing on PD's Internet site. The department may add any additional bidder instructions as may be required to suit the special needs of an individual solicitation.
- (5) General Provisions. To adequately protect the State, all solicitations valued at \$5,000.00 or more must include the current General Provisions (GSPD-401 Rev.1-1-01 or later revision) ([Attachment 12](#)). The General Provisions may be incorporated into solicitations by reference to PD's Internet site. The General Provisions may be modified in certain instances (see the General Provisions Summary on PD's internet site). These modifications should be included as Special Provisions and referenced as such on the CDPO. Any addition, deletion or alteration of any provision may not occur without prior approval by the department's internal legal counsel OR in the absence of such legal counsel, PD's Contract Negotiation Manager. Evidence of legal review and approval must be maintained in the procurement file. Updated versions of the General Provisions will be posted periodically and are available for printing on PD's internet site.
- (6) Information Technology Model Contract Language. Information technology solicitations that are expected to exceed \$100,000.00 should include the state's Information Technology Contract Language Modules in addition to the General Provisions. These modules are comprised of the Information Technology General Terms and Conditions and Special Provisions for purchase, maintenance, software license, and personal services modules. The department should include the General Terms and Conditions and select the applicable module(s) to fit the specific transaction. The language may be modified to suit the needs of the particular transaction, however any addition, deletion or alteration of any provision must be approved in advance by the department's legal counsel or, in the absence of departmental legal counsel, PD's Contract Negotiations Manager. Departments should develop a separate special provisions module titled "Department Special Provisions" to include these modifications and/or alterations. Evidence of legal review and approval must be maintained in the procurement file. The Information Technology General Terms and Conditions and Special Provisions Modules can be found on PD's internet site.

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- (7) Statement of Work. A department must include a statement of work for all services transactions and for commodity transactions when appropriate. A statement of work protects the State and the contractor by identifying and documenting the details of the work to be performed. A statement of work is unique to each order, but usually consists, for example, of some or all of the following:
- a detailed statement of the purpose, objective or goals to be undertaken by the contractor
 - the job classification or approximate skill level of the personnel to be made available by the contractor
 - an identification of all significant material to be developed by the contractor and delivered to the State
 - an identification of all significant materials to be delivered by the State to the contractor
 - an estimated time schedule for the provision of these services by the contractor
 - completion criteria for the work to be performed
 - the name or identification of the contractor personnel to be assigned
 - the contractor's work hours required to accomplish the purpose, objective or goals
 - the contractor's billing rates per work hour (as provided in the contract documentation)
 - contractor's total cost
- (8) Bid Evaluation. Attached is a suggested format for a "Bid/Quote Worksheet" to use to document the quotations received. This worksheet will facilitate easy compilation and evaluation of quotations received and will assist in final selection. If another supplier, other than the lowest responsible bidder meeting specifications is selected for award, documentation must be included in the procurement file explaining why a lower bid was rejected, and how and why the selection was made.
- (9) File Documentation. Regardless of the solicitation method used, the procurement file must contain bid documentation and/or the written bid that includes all the requirements of the purchase, the contract model sent to the contractor, the name and address of each supplier contacted, the amount of each supplier's quote, and the date the supplier was contacted. A certification of compliance to the requirements of the Department of Information Technology must also be included.

3. PURCHASE ORDER/CONTRACT CREATION

All purchase order/contract awards in excess of \$5,000.00 resulting from competitive bidding must allow for a five (5) working day protest period. See Section I.

- a. Contract/Delegation Purchase Order (CDPO) (Std 65). All purchase orders prepared using this delegation, except as described in Section F.3.(b), will use the CDPO (Rev. 12/00 or later revision). Where necessary, the department may create its own form as a substitute version so long as the substitute is identical in every detail to the pre-printed form. The CDPO includes elements designed to capture the department's delegation number, agency bill code, information technology project identification number, supplier identification number, and other information important to PD's management of the statewide acquisition program. The delegation number also informs the State Controller's Office that the CDPO does not require DGS approval. Creation of a substitute version which is not identical in every detail to the pre-printed form must be submitted to PD's Delegation Resources Program for review and approval, prior to use.

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- b. Standard Agreement (Std 2/213 and Std. 213www). Contracts for information technology services, particularly those exceeding \$100,000.00, should be prepared using the State's Standard Agreement (either the Std. 2, 213 or Std. 213www) and include the General Provisions, the Information Technology General Terms and Conditions, all relevant Special Provisions Modules, and a statement of work as discussed in Sections F.2.c.(6) and (7). Where the model language has not been incorporated, especially in solicitations less than \$100,000.00, the CDPO may be used. All agreements prepared under this delegation must reference the delegation number in the Contract/Delegation Number box on the CDPO or in a conspicuous location on the Standard Agreement. This number informs the SCO that the contract does not require DGS approval.
- c. Unique Numbering. To avoid duplicate billings by PD and incorrect supplier invoicing, the department's agency order number must be unique from transaction to transaction and from year to year (i.e. 00-001, 00-002, 00-003, etc., "00" representing the fiscal year of issue).
- d. General Provisions. To adequately protect the State, all orders of \$5,000.00 or more must include the current General Provisions (1-1-01 version or later revision) and may be incorporated into solicitations and contracts by reference to PD's internet site. This reference is included as a "check mark" box on the CDPO (1/1/01 version). The General Provisions may be modified in certain instances (see the General Provisions Summary on PD's internet site). These modifications should be included as Special Provisions and referenced as such on the CDPO. Any addition, deletion or alteration of any provision may not occur without prior approval by the department's internal legal counsel OR in the absence of such legal counsel, PD's Contract Negotiation Manager. Evidence of legal review and approval must be maintained in the procurement file. Updated versions of the General Provisions will be posted periodically and are available for printing on PD's Internet site.

Orders with a value less than \$5,000.00 may include the General Provisions at the department's discretion. However, we suggest that the department use this discretion wisely and consider risk carefully when determining that the General Provisions need not be included. If the General Provisions are not included, the department must, at a minimum, include the individual clauses required by statute, see [Attachment 3](#).

- e. Corporations Qualified to do Business in California. It is the responsibility of each department to verify that a corporation is qualified to do business in California. Verification can be made through the Secretary of State. The procurement file must be documented with this information.
- f. Amendments and Changes. If the purchase order was the result of a competitive solicitation, the unit price may not be increased unless specifically allowed in the original solicitation and evaluated for award. If, however, other conditions cause the need to alter a transaction after the original purchase order has been issued, the following guidelines apply:
 - (1) Issue an amended purchase order using the original purchase order number and noting "Amendment No. 1" (or document subsequent numbers as applicable).
 - (2) The amended order should detail the specific change (i.e., increase or decrease in quantity, corrected model number, revised delivery date, change in delivery location, changes to contract language, etc.).

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- (3) If the total amount of the purchase order is being altered, show the original amount, the amount of the change, and the new total. However, do not process an amendment that will cause the contract total to exceed the delegation transaction limit, unless approved in advance by Delegation Resources.
- (4) The amendment must be reported in accordance with Section J. of these guidelines, making sure that only the amount of the amendment is reported.

G. OTHER PROCUREMENT STANDARDS, INCLUDING SOLE SOURCE

The procurement standards contained in Sections G.1 through G.4 must be developed through the solicitation process and must be used in conjunction with the competitive strategies outlined in F.1 above. **Competitive bidding shall be the method of choice for all procurement transactions of \$5,000.01 or more.** However, when it is determined that none of these strategies are capable of producing competition, the sole source process may be applied as outlined in section G.6.

1. VALUE EFFECTIVE ACQUISITIONS

For transactions valued at less than \$500,000, PD encourages departments to evaluate quotes based on the most value-effective solution to the State's requirements, where factors other than cost are of considerable value to the State. When this is the case, the two-envelope evaluation procedure shall be followed as referenced below.

In accordance with PCC Section 12102, large scale system integration projects (typically, but not limited to, greater than \$500,000) and IT services are to be awarded based on the proposal that provides the most value-effective solution to the State's requirements as determined by the evaluation criteria outlined in the solicitation. The evaluation shall provide for the selection of a supplier on an objective basis that is not limited to cost alone. **When evaluating on other than cost alone, PCC Section 12102(b) requires the use of a two-envelope evaluation procedure as follows:**

- All bidder cost information must be submitted in an envelope separate from the technical and administrative proposals and kept sealed and under lock and key until evaluation of all criteria, other than cost, is completed and the results published.
- The sealed cost proposals shall then be opened at the time and place designated in the solicitation and the remainder of the evaluation completed.
- The State's contact person for the administration of the procurement shall be identified in the solicitation and that person shall execute a Cost Proposal Certificate under penalty of perjury (see [Attachment 13](#)). This certification states that all cost proposals received by the State have been maintained sealed and under lock and key until the time cost proposals are opened, and shall be made a permanent part of the official procurement file.

If you require assistance or advice regarding use of evaluation factors and/or scoring methodologies, contact PD's Delegation Resources Program.

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2. PRE-DETERMINED SUPPLIERS AND/OR PRODUCTS

- a. If the department determines that only certain suppliers and/or products can meet its needs, a competitive bid can be conducted soliciting only those pre-determined suppliers or products without prior approval from PD. Examples of acceptable types of pre-determination include suppliers of certain goods authorized or certified by a manufacturer or goods of a specific make and/or model needed to meet the state's need.
- b. When a competitive bid is conducted using pre-determined suppliers and/or products, the procurement file must be appropriately documented with the details of the business need, why other suppliers and/or products will not meet the need, and how the proposed suppliers and/or products were determined.

3. FINANCING/ LEASING

- a. All departments are permitted to enter into either installment purchase agreements (commonly referred to in the industry as "lease purchases") or financed leases as described in the Uniform Commercial Code, Section 2A (commonly referred to as "operating leases"), via PD's financial marketplaces – "GS \$Mart" or "Lease \$Mart."
- b. Due to stringent financing requirements, PD recommends that the department contact the GS \$Mart or Lease \$Mart managers prior to entertaining financing in solicitations valued at less than \$100,000.00.
- c. In order to utilize either GS \$Mart or Lease \$Mart, mandatory language (see the PD internet site) must be added to the solicitation, including a line item for the marketplace processing fee, a required amortization or lease payment schedule, and any pertinent contract documents. If there is a demonstrated need for any other type of financing or leasing plan, separate from the State's financial marketplace, approval from the GS \$Mart or Lease \$Mart manager must be received in advance. If approval is granted, the appropriate financial manager will assist in the facilitation of such a transaction, and a consultation service fee may be charged.
- d. A complete copy of all financing or leasing purchase orders or agreements must be sent to the GS \$Mart or Lease \$Mart manager, respectively, within 15 days of the purchase order date. This copy is needed to render an "Opinion of Counsel," a critical step in the closure of financing and leasing transactions. This copy will also be used to report the transaction to the Internal Revenue Service (IRS), in accordance with the Tax Code of 1986, to avoid IRS penalties.
- e. In accordance with PCC Section 12102(c), lease or purchase alternatives must be considered, if any bidder so requests not less than 30 days prior to the date of the final bid submission. The bidder must be allowed this consideration unless it can be shown that the alternate financing should not be considered, and PD concurs. For more information or assistance regarding PD's financial marketplace, contact the GS \$Mart manager or the Lease \$Mart manager.

4. TERM PURCHASE CONTRACTS

A "Term Purchase Contract" is defined as the establishment of an acquisition mechanism for a specified period of time, for a specified list of products and quantities for items a department acquires on a routine basis. Prior to establishing a term purchase contract, first consider using statewide master contracts and/or California Multiple Award Schedules (CMAS). The following conditions apply to these transactions:

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- a. A competitive solicitation must be conducted to establish a term purchase contract whenever the dollar amount is expected to be \$5,000.00 or greater.
- b. The solicitation must clearly state the start and end dates of the contract, but in no event may it exceed one year.
- c. The solicitation must clearly state the aggregate amount of the contract, but in no event may it exceed \$500,000.00. Neither the contract, nor the cumulative value of orders released against the contract may exceed the amount of this delegation..
- d. The solicitation must clearly state a maximum number of units that may be purchased (i.e., 10 units will be purchased upon award, and the department reserves the right to purchase up to 10 more units during the term of this agreement). Note that evaluation and award must be based on the total anticipated quantities per line item to be purchased during the term of the contract (i.e., in the example above, evaluation and award would be made on 20 units). The department is cautioned against making commitments to a certain number of items, unless it is prepared to meet that commitment.
- e. The solicitation must clearly define how unit pricing will be treated over the course of the contract (i.e., is the unit pricing firm for the term or are provisions included in the solicitation that allow for unit price increase or decrease).
- f. The department must keep a running total of orders placed against each term purchase contract in the file documentation for accountability purposes.

These are only a few of the issues that must be addressed when conducting a competitive solicitation for a term purchase contract. It is strongly recommended the department contact PD's Delegation Resources Program for assistance in conducting these types of solicitations.

5. BLANKET PURCHASE ORDER

A Blanket Purchase Order is defined as an acquisition mechanism established for no longer than one year with one supplier where the quantities of specific products are not known. In these cases, the department has determined that a group of goods from a specified supplier are necessary to the program, but the department must be flexible when determining the instant need. In no case may a blanket purchase order exceed \$5,000.00 per transaction. The department must keep a copy of each order placed against each blanket purchase order.

6. SOLE SOURCE ACQUISITIONS

This delegation includes the authority to purchase goods using sole source methodology whenever the business case supports no competition.

- a. Acquisitions Valued at Less Than \$5,000.00. Purchases less than \$5,000.00 need not be approved or documented as sole source purchases. However, the reasonableness of the price obtained for these transactions must be included in the file documentation.
- b. Acquisitions Valued at \$5,000.00 to \$25,000.00. Competition is always encouraged, however acquisitions valued at \$5,000.00 to \$25,000.00 (excluding tax, shipping, postage, handling, etc.) may be acquired without competitive bidding or prior approval from PD. A sole source justification that documents the business case must be included in the transaction file. Attached is the required form ("Sole Source Justification", [Attachment 14](#)) to document these types of transactions.

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- c. Acquisitions Valued Above \$25,000.00. This delegation does not include the authority to approve sole source transactions above \$25,000.00. Sole source transactions valued above \$25,000 must be submitted to PD for review and approval.
- d. Reporting. Sole source transactions valued at \$5,000.00 to \$25,000.00 and approved by the department must be reported to the Delegation Resources Program. The department will report these transactions by submitting a copy of the CDPO, Std. 2/213 or Std. 213www and the Sole Source Justification to PD on a quarterly basis. Reports are due by the 10th of the month following the last day of the quarter, as follows:
 - First Quarter Report for the period January 1 through March 31 is due April 10.
 - Second Quarter Report for the period April 1 through June 30 is due July 10.
 - Third Quarter Report for the period July 1 to September 30 is due October 10.
 - Fourth Quarter Report for the period October 1 through December 31 is due January 10.The department must use PD's Sole Source Report ([Attachment 15](#)), when submitting the sole source transactions to PD. The sole source reporting required by this section is in addition to the transaction reporting required by Section J.
- e. Sole Source Privilege. The department is reminded that the ability to process sole source acquisitions under this delegation is a privilege which has attached to it a high level of accountability. Abuse of this privilege may result in suspension or revocation of the department's authority to process sole source acquisitions under this delegation.
- f. Agency Secretary Approval. All requirements of Management Memo 96-16 and Executive Order W-103-94 must be adhered to when processing sole source acquisitions.
- g. Proprietary Software. Proprietary, shrink-wrapped commercial off-the-shelf (COTS) software MUST be competitively bid.

H. BUSINESS PARTICIPATION PROGRAM REQUIREMENTS

1. SMALL BUSINESS

- a. Opportunity. Pursuant to the Small Business Procurement Contract Act (GC Sections 14835 through 14843), all departments must offer procurement opportunities to small businesses whenever possible. When establishing bidder lists, make efforts to seek out and include certified small businesses. The department may contact PD's Office of Small Business Certification and Resources (OSBCR) or PD's Small Business Opportunity Program for additional assistance.
- b. Preference. All agencies must offer a 5 percent preference to certified small businesses whenever conducting a competitive solicitations, except when conducted under GC 14838.5. To apply the preference, 5 percent of the low net non-small business bid is subtracted from the low net certified small business bid. If this calculation causes the certified small business bid to be lower than the non-small business bid, then the award may be made to the certified small business if it is compliant with all other requirements. It is important to note that application of this preference is for evaluation purposes only and does not change the actual amounts bid by any supplier. However, the file should be documented with the calculation that follows so that any person can ascertain how the award was made.

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Example:

<u>Supplier A – Non-Small Business</u>	<u>Supplier B – Certified Small Business</u>
\$12,500.00 Low Net Bid	\$13,000.00 Low Net Bid
X .05 Preference Factor	- 625.00
= \$ 625.00	\$12,375.00

\$12,375.00 is less than \$12,500.00 so in this case the award would be made to the Certified Small Business (assuming all other conditions of the solicitation have been met).

- c. Increased Opportunity for Small Businesses. Pursuant to GC Section 14838.5(a) and (b), State agencies may award contracts of \$5,000.01 to \$99,999.99 for goods, services or information technology goods and/or services to **certified small businesses**. In order to do so, departments must have obtained price quotations from at least two responsible and responsive certified small businesses and make the award to one of the certified small businesses. The Public Contract Code requirements for advertising (for services solicitations) and for furnishing a copy of the solicitation to all suppliers on the DGS pre-qualified bidders list do not apply to these transactions. Departments must verify a small business' eligibility by contacting OSBCR's internet site and printing the data for documenting the procurement file or stating certification eligibility if verifying by telephone. Proof of eligibility must be maintained in the purchase file for all transactions issued under this authority. GC Section 14838.5 authority may not be used if a bid is obtained from any supplier other than a certified small business.
- d. Annual Goal. GC Section 14838 requires DGS to establish goals for certified small business participation. Therefore, as a condition of this delegation, the department **must** make a concerted effort to award a minimum of 25 percent of total annual expenditures to certified small businesses.
- e. Reporting. The department must report small business participation information to the DGS Business Management Unit annually by August 1st.

2. DISABLED VETERAN-OWNED BUSINESS

- a. Annual Goal. Pursuant to PCC Section 10115, every department shall have an annual statewide participation goal of not less than 3 percent for disabled veteran-owned business enterprises. The department director or designee has the discretion to exempt individual transactions from the goal; however, the annual goal still applies.
- b. Solicitation Language. Language that complies with the Disabled Veteran Business Enterprise (DVBE) Participation Program must be included in solicitations as selected by the department. The department may use DGS solicitation language or language developed pursuant to regulations adopted by the department's administration. The language used must include the option for suppliers to submit a Business Utilization Plan to PD for approval as permitted by PCC Section 10115.15.
- c. Reporting. The department must report disabled veteran-owned business enterprise participation to the Governor, Legislature OSBCR and Department of Veterans Affairs annually by January 1.

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3. TARGET AREA CONTRACT PREFERENCE ACT (TACPA)

The Target Area Contract Preference Act (TACPA) is a state contracting program established as a partnership between state government and business to improve California's overall economy. The program's intent is to stimulate economic development and employment in designated "distressed" areas in California. TACPA provides eligible California-based businesses with a five percent (5%) worksite bid preference when they commit to perform goods and services contracts over \$100,000 in designated distressed areas and an additional one to 4 percent (1 – 4%) bid preference when they commit to hire individuals having a high risk of unemployment (see [Attachment 16](#)). For questions regarding the use of this preference and/or the evaluation of requested preferences, contact the OSBCR, (see [Attachment 4](#)).

4. ENTERPRISE ZONE ACT (EZA)

On behalf of California's overall economic interest, the Enterprise Zone Act (EZA) was established to stimulate business and industrial growth in designated enterprise zones by relaxing regulatory controls that impede private investment. Eligible California-based businesses may obtain a five percent (5%) worksite bid preference when they commit to perform goods and services contracts over \$100,000 in designated enterprise zones, and an additional one to four (1 – 4%) bid preference when they commit to hire persons living in a targeted employment area or if they are enterprise zone eligible employees, (see [Attachment 17](#)). For questions regarding the use of this preference and/or the evaluation of requested preferences, contact the OSBCR, (see [Attachment 4](#)).

5. LOCAL AGENCY MILITARY BASE RECOVERY AREA ACT (LAMBRA)

On behalf of California's overall economic interest, the Local Agency Military Base Recovery Area (LAMBRA) Act was established to stimulate business and industrial growth in those areas that are experiencing military base closures by relaxing regulatory controls that impede private investment. LAMBRA provides incentives for businesses located in, or contracts performed at worksites within a LAMBRA. Eligible businesses may obtain a five percent (5%) worksite bid preference when they commit to perform goods and services contracts over \$100,000 in designated areas and an additional one to four (1 – 4%) bid preference when they commit to hire persons living within a local agency military base recovery area, (see [Attachment 18](#)). For questions regarding the use of this preference and/or the evaluation of requested preferences, contact the OSBCR, (see [Attachment 4](#)).

6. RECYCLED PRODUCTS

- a. Utilization. PCC Section 12150, et. seq. requires agencies to utilize Recycled Content Products (RCP). The current percentage requirements of specific types of goods in which recycled content products must be purchased are outlined in Management Memo (MM) 99-01. This MM will be revised shortly, however the percentage requirements remain in effect. A minimum of 50 percent of purchases in ten of the eleven targeted groups must be products meeting the requirements of an RCP. The exception is "fine printing and writing paper" which has a requirement of 25 percent (DGS divisions have a requirement of 40 percent).

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- b. Preference. PCC Sections 12162(c) and 12205(b) require all state agencies to grant a preference to suppliers offering RCP's. In cooperation with the Integrated Waste Management Board, DGS has established a preference of 5 percent for all categories, except fine printing and writing paper that has a 10 percent preference. To apply the preference, 5 percent (or 10 percent) of the low net non-RCP supplier's bid is subtracted from the low net RCP supplier's bid. If this calculation causes the RCP supplier's bid to be lower than the non-RCP supplier's bid, then the award can be made to the RCP supplier if he/she is compliant with all other requirements. It is important to note that application of this preference is for evaluation purposes only and does not change the actual amounts bid by any supplier.

Example:

Supplier A – Non-RCP Supplier	Supplier B – RCP Supplier
\$12,500.00 Low Net Bid	\$13,000.00 Low Net Bid
X .05 Preference Factor	- 625.00
= \$ 625.00	\$12,375.00

\$12,375.00 is less than \$12,500.00 so the award would be made to the RCP supplier (if all other conditions of the solicitation have been met).

- c. Certification. All purchases of products in the targeted categories must include a certification by the supplier as to the content percentage. The required language is as follows:

“Contractor hereby certifies under penalty of perjury that (enter value or zero here) percent of the materials, goods or supplies offered, or products used in the performance of this contract meets or exceeds the minimum percentage of recycled material as defined in Sections 12161 and 12200 of the Public Contract Code.”

- d. Reporting. Agencies are required to annually report purchases of RCP's and non-RCP's in the targeted groups to the California Integrated Waste Management Board.

I. PROTESTS AND POST-AWARD DISPUTES

1. Protests

- a. When the evaluation of all the bids received has been completed and the analysis points to a selected supplier for award, a Notice of Intent to Award is to be mailed to all bidders allowing a five (5) working day protest period. Once the protest period has expired with no protests filed, the purchase order/contract may be executed to the selected supplier.
- b. In accordance with Section PCC 12102 (h), the availability of the protest process may be limited to only those suppliers who have participated in the bid process.
- c. If a protest is received, it must be resolved through the Procurement Division, as the disposition of protests cannot be delegated. PCC 12102(h) states that the Victim Compensation and Government Claims Board must resolve any protest that has not been withdrawn. Immediately send/fax copies of any protest received to Protest and Dispute Resolution Unit, Procurement Division, DGS. You may reach this office by phone at (916) 323-1468 or (916) 323-9799.

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2. Post-Award Disputes

If a post-award dispute between the department and a supplier arises, the department shall deal in good faith and attempt to resolve potential disputes informally. Suppliers should state their disputes in writing, including all facts of the dispute, and submit it to the Department Director or designee. The Department Director or designee shall review the matter and render a final decision in a timely manner. If the supplier is not satisfied with the final decision, the matter may be referred to PD's Protest and Dispute Resolution Unit for final resolution.

J. REPORTING

1. All transactions prepared under this delegation must be reported to PD in one of the following manners:

Option 1. The department may create CDPO's directly in the Procurement Information Network (PIN) System.

OR

Option 2. Forward a copy of each CDPO to PD. It is important that copies are clear, legible and complete in every detail. Orders must be batched together for each reporting period and forwarded to the Procurement Division, Business Management Section, Data Capture Unit, 1823 – 14th Street, Sacramento, CA 95814, on a monthly basis. Copies must be forwarded by the tenth day following each monthly period (i.e. submit by the 10th day of April for the March reporting period).

OR

Option 3. Forward a copy of the monthly summary report of activity conducted under this delegation authority. Forward reports to Procurement Division, Business Management Section, Data Capture Unit, 1823 14th Street, Sacramento, CA 95814. This report must include all data elements as in the attached report format ([Attachment 19](#)), [Instructions](#), and must be formatted as shown. To ensure correct data entry, reports must be typed or computer generated, no less than 12 pitch, and printed with a landscape orientation. Reports must be forwarded by the tenth day following each monthly period (i.e. submit by the 10th day of April for the March reporting period). If a summary report is used, do not send individual copies of orders to avoid possible duplicate billings.

2. Sole source transactions approved in accordance with Section G.6. must be reported as required by this section.
3. Orders using CAL-Card as the payment method are not subject to the delegation administrative fee and need not be reported with the delegation reporting.

K. DGS BILLING

All transactions issued under this delegation (except those paid with CAL-Card) are subject to an administrative fee as published in the DGS Price Book, based on the subtotal amount of the CDPO. The DGS Price Book is available on the DGS internet site or may be obtained by contacting the Delegations Resources Program.

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L. FILE DOCUMENTATION

Each procurement file must contain, at a minimum and as applicable for the transaction, the following documentation. All record keeping guidelines below, except item 7, apply to CAL-Card purchases.

1. Copies of any required approvals, including certification of compliance
2. Copies of specifications or other solicitation information
3. A list of all suppliers solicited (name, telephone number, address)
4. Bid/Quote Worksheet
5. All quotes received
6. Sole Source Justification
7. Copy of purchase order and any amendments
8. Cost evaluation
9. Documentation of selection of other than lowest bidder
10. Preference program calculations
11. Corporate qualification verification
12. Documentation demonstrating compliance with the other applicable laws, policies, and procedures
13. All related correspondence, paper or electronic, and written record of verbal conversations